

## FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are NecessarySections 31-137.1, 31-137.11 and 31-137.12Specific Purpose:

These sections were adopted to define transitional care as the time period between removal of a child from his/her home, an approved or licensed care provider or a person the child has been detained with and the placement or detention of that child.

Factual Basis:

Current law authorizes a county Child Welfare Services (CWS) Social Worker or probation officer to take and maintain temporary custody of a minor who has been declared a dependent child of the juvenile court or who the social worker or probation officer has reasonable cause to believe is a child who has suffered serious harm or is at substantial risk of suffering serious harm as a result of abuse or neglect. Current law authorizes a county CWS Social Worker or probation officer to maintain custody of a child until the child is placed or detained in the home of a relative, nonrelative extended family member or a licensed home or facility. Once a child is so placed, the current law imposes upon the care provider duties to provide adequate care and supervision. There are, however, currently no laws or regulations which establish a duty on the county CWS or probation agency to provide adequate care and supervision to children in its custody. These regulations are designed to fill that gap and to ensure that standards of care and supervision apply immediately upon removal of a child from his/her home or placement setting by a county CWS or probation agency.

Section 31-137.2Specific Purpose:

This section was adopted to establish health and safety standards that are applicable when a child is in transitional care.

Factual Basis:

It is the duty of the California Department of Social Services (CDSS) to ensure the health and safety of a child while he/she is in transitional care. The child is entitled to health and safety protections from the moment of removal from the parental home or placement setting.

Sections 31-137.21, 31-137.211, 31-137.212, 31-137.213, 31-137.214, 31-137.215 and 31-137.215Specific Purpose:

This section was adopted to establish the requirement that a county CWS or probation agency provide or ensure the provision of adequate care and supervision of a child while that child is in transitional care. Adequate care and supervision includes: adequate food, supervision by an adequate number of trained staff, age-appropriate activities, ensuring the child's medical needs are met and protecting the personal rights of children, including meeting the appropriate educational needs of the child. This requirement will apply regardless of whether the child is under the direct care and supervision of county CWS or probation agency staff, or if during the transitional care period the county CWS Social Worker or probation officer places the child with any third party, including but not limited to an assessment or receiving center.

Factual Basis:

Pursuant to W&I Code section 16501(a), a child who is under the custody and control of the county CWS or probation agency is entitled to receive adequate care and supervision in order to protect his/her health and safety. Currently there is no regulation that operationalizes this requirement in this setting. Some county CWS or probation agencies temporarily place a child in an assessment or receiving center or unregulated facility operated by a third party. These centers are typically child-friendly locations that, at this time, are not required to be licensed. In order to ensure that a child receives adequate care and supervision in these centers, it is necessary to impose upon the county CWS or probation agency a continuing duty to ensure that adequate care and supervision is provided to a child in transitional care.

Section 31-137.22Specific Purpose:

This section was adopted to require that an adult having regular contact with a child in transitional care has a California criminal record clearance pursuant to Health and Safety (H&S) Code section 1522. This requirement will apply regardless if the child is under the direct care and supervision of county CWS or probation agency staff, or if, during the transitional care period the county CWS or probation agency places the child with any third party, including but not limited to an assessment or receiving center. The H&S Code section 1522 requires fingerprint identification as a condition of issuing a license, permit or certificate of approval for a person to operate or provide direct care services in a community care facility, foster family home (including a relative and Nonrelative Extended Family Member) or a certified family home of a licensed foster family agency. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the CDSS before his or her initial presence.

Factual Basis:

Requiring an adult who has regular contact with a child in transitional care to have a California criminal record clearance will promote the health and safety of the child by ensuring that an adult with a criminal conviction will not have regular contact with the child. It is well accepted that adults with certain criminal convictions pose an unreasonable risk to the health and safety of a child in care. Accordingly, to ensure the health, safety and welfare of transitional care, a requirement protecting a child from adults with criminal convictions is necessary.

Section 31-137.23Specific Purpose:

This section was adopted to require that a check of the Child Abuse Central Index (CACI) has occurred for all adults who have regular contact with a child in transitional care consistent with H&S Code section 1522.1. This requirement will apply regardless if the child is under the direct care and supervision of county CWS or probation agency staff, or if, during the transitional care period the county CWS or probation agency places the child with any third party, including but not limited to an assessment or receiving center. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from CDSS before his or her initial presence.

Factual Basis:

Requiring an adult who has regular contact with a child in transitional care to have a CACI clearance will promote the health and safety of the child by ensuring that an adult with a criminal conviction will not have regular contact with the child. It is well accepted that adults with certain criminal convictions pose an unreasonable risk to the health and safety of a child in care. Accordingly, to ensure the health, safety and welfare of transitional care, a requirement protecting a child from adults with criminal convictions is necessary.

Sections 31-137.24, 31-137.241, 31-137.242 and 31-137.243Specific Purpose:

This section was adopted to establish the requirement that a county CWS or probation agency ensure that the physical environment where a child in transitional care is located is free from undue hazards. This requirement will apply regardless if the child in transitional care is located on county property or is located elsewhere, including county vehicles used to transport a child or a facility such as an assessment or receiving center operated by a third party.

Factual Basis:

The requirement that the county CWS or probation agency provide a physical environment that adequately protects the health and safety of the child including, but not limited to,

adhering to local zoning, safety and building ordinances. Accordingly, to ensure the health, safety and welfare of a child in transitional care, a requirement protecting that child from hazards in his/her immediate physical environment is necessary.

Sections 31-137.3, 31-137.31, 31-137.311 and 31-137.32

Specific Purpose:

This section was adopted to ensure that the length of time a child remains in a transitional care assessment or receiving center or other unlicensed child care facility or location shall be less than 24 hours. This section also requires documentation of stays of 24 hours or longer.

Factual Basis:

Community Care Licensing law requires the operator of a child care or residential facility that provides care for a 24-hour period or longer to have a license as specified in H&S Code section 1502. Therefore, a center that provides care and supervision to a child in transitional care for a 24-hour period or longer is operating in violation of law. This rule is necessary to ensure that the county CWS or probation agency is not placing a child in transitional care in a location that is operating in violation of law. Documentation of stays of 24 hours or more is necessary to address noncompliant overstay.

**Final Modification:**

**Following the public hearing, CDSS is making clarifying changes to Sections 31-137.3, 31-137.31 and 31-137.311.**

**In Section 31-137.3, the language "in an assessment or receiving center or other unlicensed child care facility or location" was removed to clarify the regulation applicability is not limited to certain facilities and transitional care stays that exceed the stated limit are prohibited regardless of location. The new language reads "The length of time a child may remain in transitional care shall be less than 24 hours."**

**In Sections 31-137.31 and 31.137.311, CDSS is adding the language "and/or any worker involved in placement of the child" to acknowledge staff in different roles may participate in the placement process and is required to comply with documentation responsibilities.**

Sections 31-137.4, 31-137.41, 31-137.42, 31-137.43, 31-137.44, 31-137.45

Specific Purpose:

This section was adopted to describe the oversight responsibilities and authority of CDSS to investigate complaints, conduct inspections of the buildings or grounds where a child in transitional care is located, interview individuals relating to the provisions of transitional care, develop or review corrective action plans developed by the county CWS or probation agency to correct identified deficiencies, monitor county CWS and probation agency

compliance with the approved corrective action plan or take other actions authorized under Welfare and Institutions (W&I) Code section 10605.

Factual Basis:

To ensure county CWS and probation agency compliance, it is necessary to authorize CDSS to exercise oversight and monitoring responsibilities for transitional care. Fundamental to proper oversight is the authority to investigate complaints concerning transitional care and to conduct on-site reviews of persons providing transitional care and locations where transitional care is being provided.

If in the course of such oversight activities CDSS identifies non-conformance with the requirements set forth in Section 31-137.4 through Section 31-137.45, it is necessary for the CDSS to have the authority to ensure that those deficiencies are corrected by the county CWS or probation agency. It is well established that the development and execution of a corrective action plan is an effective mechanism to ensure county CWS and probation agency compliance with laws or regulations, and that such authorities are not prohibited by law. The W&I Code section 10605 provides the authority for the CDSS to take these appropriate actions to ensure compliance with the requirements set forth in Section 31-137.4 through Section 31-137.45.

Section 31-137.5

Specific Purpose:

This section was adopted to allow CDSS to delegate its authority to the Community Care Licensing Division (CCLD), as appropriate, to ensure prompt complaint response and deficiency correction. For this purpose, CCLD will only act under the scope of the authority delegated by CDSS.

Factual Basis:

Complaint response and deficiency correction may require site visits and investigations on short notice and in remote areas of California. The CCLD has field offices located throughout the State and are able to respond promptly. Moreover, the CCLD has expertise in conducting child health and safety complaint investigations for licensed child care and children's residential facilities, as well as conducting site visits to ensure compliance with corrective action plans. Accordingly, to ensure expeditious complaint response and prompt deficiency correction throughout the State, it is necessary to authorize CDSS to delegate its oversight and monitoring authority to CCLD to perform these activities.

b) Identification of Documents Upon Which Department Is Relying

- (1) H&S Code section 1522 and 1522.1
- (2) Penal Code (PC) section 11105.3
- (3) Manual of Policies and Procedures (MPP) sections 31-135 and 31-405

(4) W&I Code sections 309(d)(1), 16001.9, 10605 and 16501(a)

c) Local Mandate Statement

These regulations do not impose a mandate upon local agencies or school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code.

d) Statement of Alternatives Considered

The CDSS did consider alternatives other than developing regulations. However, the CDSS determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed. Regulations would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact on Business

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on a fiscal impact analysis by the department, stating that the adoption of these regulations would solely impact policies and procedures within CDSS and County Child Welfare Agencies.

f) Economic Impact Assessment

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor will it result in the elimination of existing businesses or create or expand businesses in the State of California.

These regulations establish a basic standard of care for children performed by individuals in the county level. It does not affect the number of workers involved in the activity, as it only changes the rules; therefore, CDSS has determined that these regulations do not have an impact on the creation or elimination of jobs in the State of California.

These regulations also impose duties on the counties, rather than duties on businesses. The actions that need to be taken are in connection between the state and county; therefore, CDSS has determined that these regulations do not have an impact on businesses.

The benefits of these proposed amendments will ensure that a consistent and necessary standard of care and safety is maintained by a CWS Agency for a child during the time a child is in the temporary custody of a CWS social worker.

The following documents were relied upon in proposing the regulatory action:

- (1) H&S Code section 1522 and 1522.1
- (2) PC section 11105.3
- (3) MPP sections 31-135 and 31-405
- (4) W&I Code sections 309(d)(1), 16001.9, 10605 and 16501(a)

g) Benefits Anticipated from Regulatory Action

The adoption of the proposed section will ensure that the health and safety of children is maintained and will minimize the potential traumatic impact of removal.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.

i) Testimony and Response

These regulations were considered as Item # 1 at the public hearing held on July 20, 2016, in Sacramento, California. Written testimony was received from the following during the 45-day comment period from June 3, 2016 to 5:00 p.m. July 20, 2016:

**Comments from Disability Rights California (DRC)**

1. ACIN No. I-07-14

Comment:

The DRC requests that the regulations specifically outline the services provided in the ACIN No. I-07-14, dated April 14, 2014. They also instruct CWS and probation agencies that children in transitional care prior to placement are eligible for Early and Periodic Screening, Diagnosis, & Treatment and request that CWS and probation agencies be instructed to facilitate evaluations, amendments to students' Individualized Education Plans if necessary and transition planning for age appropriate youth as required under state and federal law.

Response:

We thank you for your comment; however we cannot accept this recommendation at this time. The CDSS intends for these regulations to be applied broadly to transitional care settings so as to ensure that all children in care are provided adequate care and supervision. Section 31-137.3 establishes the length of time a child may remain in transitional care shall be less than 24 hours. It should be further noted that under some circumstances, transitional care may be provided in an unconventional setting; therefore it is not appropriate to specifically mandate all services in the regulations.

The CDSS values the importance of meeting all the needs of children in transitional care. Section 31-137.215 states the personal rights of children should be protected consistent with W&I Code section 16001.9, considering the transitional care setting. The CDSS intends the handbook section in the regulation package to serve as examples of reasonable actions staff should take to address the needs of the children within this setting.

### **Comments from County Welfare Directors Association of California (CWDA)**

#### **1. Section 31-137.31**

##### **Comment:**

The CWDA is concerned that the term "child's caseworker" should be made less specific so that a placement worker could also document information in the child's case file.

##### **Response:**

We thank you for your comment. We will be adding "and/or any other worker involved in the placement of the child" to follow "the child's caseworker."

### **Comments from California Coalition for Youth (CCY)**

#### **1. Section 31-137.13**

##### **Comment:**

The CCY recommends adopting this new section to read:

"The time period between identification of foster youth who has run or gone missing from care by a runaway and homeless youth shelter and the placement of that child with another licensed or approved care provider or a person providing care pursuant to Welfare and Institutions Code Section 309(d)(1)."

##### **Response:**

We thank you for your comment; however we cannot accept this recommendation at this time. The CDSS believes the definition provided in Section 31-137.1 adequately describes the meaning of transitional care. The CDSS intends these regulations to be applied broadly to transitional care settings where a child may be situated while appropriate placement is located.

2. Section 31-137.3Comment:

The CCY requests to add the statement "A child may remain in a licensed runaway and homeless youth shelter for more than 24 hours." onto this adopted section. In addition, CCT is requesting to add the following handbook section:

"HANDBOOK BEGINS HERE

Health and Safety Code Section 1502.35 provides:

(k) A runaway and homeless youth shelter is not an eligible placement option pursuant to Sections 319, 361.2, 450, and 727 of the Welfare and Institutions Code.

(l) A runaway and homeless youth shelter's program shall not be eligible for a rate pursuant to Section 11462 of the Welfare and Institutions Code. This does not preclude a runaway and homeless youth shelter from receiving reimbursement for providing services to a foster youth as may be provided at the discretion of a county.

HANDBOOK ENDS HERE"

Response:

We thank you for your comment; however we cannot accept this recommendation at this time. It is outside of the scope of the current regulations package. Such amendment would require further analysis into how we would ensure the needs of youth and families were met in regards to foster care services in such setting.

3. Section 31-137.33Comment:

The CCY requests adopted this section to read: "Transitional care may be provided by a runaway and homeless youth shelter."

Response:

We thank you for your comment; however we cannot accept this recommendation at this time. It is outside of the scope of the current regulations package. Such amendment would require further analysis into how we would ensure the needs of youth and families were met in regards to foster care services in such setting.

**Comments from Children's Advocacy Institute (CAI)**1. Section 31-137.215Comment:

The CAI recommends changing proposed Handbook Section 31-137.215 to read:

"HANDBOOK BEGINS HERE

Efforts shall be made to protect and adhere to the personal rights of children to the extent possible in a transitional care setting. For example, while it may be difficult to meet a child's educational right to attend their school of origin, all attempts should be made to facilitate the child's attendance at their school of origin during the period of transitional care. Should attendance at the child's school of origin be deemed not possible, the reason for the impossibility should be documented in the case file and other temporary educational needs can must be reasonably fulfilled. Such activities may include supporting communication with the child's school, accommodating for completion of the child's homework, or facilitating the child's attendance to Individual Education Plan (IEP) meetings and other significant school events.

HANDBOOK ENDS HERE"Response:

We thank you for your comment; however we cannot accept this recommendation at this time. The CDSS intends these regulations to be applied broadly to transitional care settings so as to ensure that all children in care are provided adequate care and supervision. Section 31-137.3 establishes the length of time a child in transitional care may remain in transitional care shall be less than 24 hours. It should be further noted that under some circumstances, transitional care may be provided in an unconventional setting; therefore it is not appropriate to specifically mandate all services in the regulations.

The CDSS values the importance of meeting all the needs of children in transitional care. Section 31-137.215 states the personal rights of children should be protected consistent with W&I Code section 16001.9, considering the transitional care setting. The CDSS intends the Handbook section in the regulations package to serve as examples of reasonable actions staff should take to address the needs of the children within this setting.

**Comments from County of San Diego**1. Section 31-137.3Comment:

San Diego County recommends amending this adoption section to read:

".3 The length of time a child in transitional care may remain in an unlicensed assessment or receiving center or other unlicensed child care facility or location shall be less than 24 hours.

.31 The child's caseworker shall document in the child's case file any location where the child stayed for a period of 24 hours or more during the period of transitional care, and information explaining why the child was not placed in an emergency placement with a relative or nonrelative extended family member or in an approved or licensed home or facility during this time period.

.311 ~~The child's caseworker~~ County child welfare staff shall enter the child's removal time, removal date, and location in the child's case file within 12 hours of removal."

Response:

We thank you for your comments. We are deleting the language, "may remain in an assessment or receiving center or other unlicensed child care facility or location" and deferring to the definition of transitional care outlined in Section 31-137.1. We will also be adding "and/or any other worker involved in the placement of the child" to follow "the child's caseworker" to address your concern in regard to Section 31-137.311.